BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: S.G. Claimant, vs. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH No. 2011061188

DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings (OAH), on August 25, September 13, and September 22, 2011, in Sacramento, California.

Rebecca Kale, claimant's sister-in-law, represented claimant. Maria Garcia, claimant's mother and conservator, was also present. Maritza Castellano, certified Spanish Interpreter, provided translation services.

Robin M. Black, Legal Services Specialist, Alta California Regional Center (ACRC), represented ACRC. Rob Franco, Supervising Case Manager, ACRC, was also present.

Evidence was received and the record remained open for submission of written closing argument. On October 14, 2011, OAH received closing briefs from claimant and ACRC.

ISSUE

In May 2011, claimant obtained diagnostic and general dental services from a non-vendorized provider. The services were obtained without a referral from ACRC for treatment of chronic and acute pain in the oral cavity which was known to the planning team and ACRC. The issue is whether ACRC must reimburse claimant for dental services received from the non-vendorized provider in the amount of $2,046. The record supports a finding that ACRC should reimburse claimant for such services.

FACTUAL FINDINGS

1. Claimant is 23 years of age and qualifies for regional center services due to his diagnosis of epilepsy, autism, and profound mental retardation. Claimant lives with his parents, Maria and Carlos Garcia, in Roseville. Mrs. Garcia is claimant's conservator. The family's primary language is Spanish and a Spanish interpreter is required. Claimant's verbal skills are limited. He uses sounds and gestures to communicate. Sometimes, claimant demonstrates his needs through behaviors including screaming, pushing others, or punching holes in walls. He requires assistance with daily living activities and 24-hour supervision.

2. On September 15, 2009, the Department of Developmental Services (CDDS) issued a memorandum to regional centers statewide regarding 2009-10 budget reductions. Effective July 29, 2009, optional Medi-Cal and Denti-Cal benefits were eliminated for consumers 21 years of age and older, with some exceptions. The memorandum also stated that "The regional center may purchase services to address the discontinued Medi-Cal services pursuant to the regional center consumer's IPP." The rate of reimbursement for "Title 17" services and service codes "shall be in accordance with the Schedule of Maximum Allowances (SMA)." The October 2009 Denti-Cal Bulletin contains a table for Federally Required Adult Dental Services (FRADS). Treatment of claimant's oral fistula falls under Code No. D726, Code Description: Primary closure of a sinus perforation.

3. Claimant's planning team last met on May 24, 2010. Present at the meeting were his parents, Tho Vinh Banh, a disability rights attorney, Norma Vidaurreta, his service coordinator, two ACRC supervisors, and two disability rights staff personnel. Claimant's Individual Program Plan (IPP) provided under "Statement of Goals" that among other services, "[claimant] will receive appropriate medical services" and "[claimant] will receive appropriate dental services." Claimant's medical care is funded by Medi-Cal.

4. At the May 2010 IPP meeting, the planning team discussed claimant's dental needs. In regards to claimant's future dental needs, the IPP report stated:

> [Claimant] requires general anesthesia in order to have any work done. [Claimant] has not been getting effective dental services. In the past, he was treated by Dr. Rodney Bughao. However, there was a disagreement between Dr. Bughao and the family and Dr. Bughao no longer treats [claimant]. Alta Regional agreed to make a referral to the ACRC Dental Coordinator so that Steven can be evaluated at his house. After the evaluation, it can be determined what Steven's additional dental needs are. Alta Regional agreed to fund any dental work previously funded by Medi-Cal, as determined to be needed after the dental coordinator evaluation.

5. The planning team discussed claimant's recent sinus problems which developed after Dr. Bughao removed a molar. In regards to claimant's sinus problems, the IPP report stated:

> Alta Regional recommended that [claimant] be seen by an Ear Nose and Throat specialist. Alta California will contact ENT providers and assist with making a referral. The family explained they have had numerous encounters with doctors unwilling to work with [claimant] due to their inexperience with working with people with developmental disabilities. Alta Regional will help educate outside providers regarding individuals with developmental disabilities to reduce the family's experience with barriers in getting appropriate medical care for [claimant].

6. One of the stated "objectives" of the May 2001 IPP recognized that claimant "needs and will receive regular medical and dental care, in order to have and maintain good physical and dental health, through March 2013." As such, the "Schedule of Services and Supports" included the following relevant assignments:

> 2.4 [Claimant] will have access to consultation with ACRC's Clinical Team, including the ACRC Dental Coordinator, as needed. ACRC will make a referral for [claimant] to be evaluated by the dental coordinator no later than July 31, 2010.
>
> 2.5 After the evaluation, it can be determined what [claimant's] additional dental needs are. Alta Regional agreed to fund any dental work previously funded by Medi-Cal, as determined to be needed after the dental coordinator evaluation.
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> 2.6 ACRC SC will contact ENT specialist for referral.
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> 2.7 ACRC will educate outside providers, including the ENT specialists regarding how to better work with individuals with developmental disabilities.

Dental Examinations and Treatment

7. ACRC refers consumers to Registered Dental Hygienists in Alternative Practice (RDHAPs) to help coordinate dental services. RDHAPs perform routine dental evaluations, provide basic dental care, and initiate referrals for more advanced services. An RDHAP can assess the need for a filling but cannot fill a cavity. The regional center relies on the opinions of the RDHAP, in determining what additional services are needed. It is

uncontroverted that claimant requires a dentist trained to work with severely disabled adults such as claimant, who requires anesthesia and a controlled environment or hospital setting.

8. ACRC referred claimant to Diann Azevedo, Registered Dental Hygienist, for an initial visit on July 27, 2010. The visit took place at her office. Ms. Azevedo's ACRC Dental Hygiene Progress Note for that visit indicates that claimant was "resistant" and "combative" during the visit, and safety restraints were used to secure his hands. Ms. Azevedo noted that claimant's soft tissue and periodontal examinations were within normal limits (WNL) and there was "no visible decay." Mrs. Garcia reported that claimant had trouble sleeping and must take Ambien every night since a November 2009 tooth extraction.

9. On July 27, 2010, Ms. Azevedo provided an adult cleaning and gave oral hygiene instructions to claimant's mother. Ms. Azevedo noted that no restorative treatment was needed at that time. She did not recommend x-rays or make any other treatment referrals. She also added the following comment: "History of Dr. Bughao treating. After tx [tooth extraction] in 11/09 seen over 6 months, 7 times in hospital waiting area. Reported nothing visually and gave 30 day notice would not be treating."

10. Rodney J. Bughao, D.D.S., an ACRC vendorized dentist, has provided dental treatment to claimant for several years. He is funded through Denti-Cal. On October 16, 2008, he extracted tooth numbers 1, 14, and 16, under general anesthesia, as part of a "full mouth dental restoration." On November 20, 2009, Dr. Bughao extracted tooth #15, under general anesthesia. According to the operative report, "On x-ray there appears to be a possible apical lucency…Part of the maxillary sinus was removed during the extraction of tooth #15." The fistula that was later diagnosed by Dr. Malick developed after Dr. Bughao extracted tooth #15.

By letter dated January 8, 2010, Dr. Bughao informed claimant that "Effective immediately" he was terminating his services to claimant. The letter also stated, "Unfortunately, we are not aware of any Adult Hospital Dentist in the Sacramento Region who is a Denti-Cal provider." The letter provided the phone numbers to the Denti-Cal Beneficiary Services line and a surgery center in Atwater that performs hospital dentistry. It is noted that Atwater is approximately 120 miles from Roseville. According to claimant's service coordinator, Norma Vidaurreta, Dr. Bughao refused to further treat claimant because he found the family "difficult to work with." ACRC did not refer claimant to another dentist after the April 2010 planning team meeting. According to Mr. Franco, ACRC did not have a vendorized dentist in the region other than Dr. Bughao who could provide the specialized dental services claimant required.

11. In response to continuing complaints of dental pain, fevers, and infections for which claimant was regularly taking antibiotics, Ms. Vidaurreta authorized a second examination by Ms. Azevedo. On December 23, 2010, claimant saw Ms. Azevedo for a follow-up visit. The progress note indicated that the periodontal examination was

"Abnormal. Facial upper right 1 tooth erythema." [1] No tooth decay present. She commented that she was "Unable to treat" and that claimant was "Not treated – Parent took to 3 emergency visits at 3 hospitals…Hospital dentist … Dr. Bughao will not treat." She checked the following referrals: "Compressive Exam D0150; Complete Series including bitewings D0210/Full Mouth x-rays (FMX); Treatment Plan." As of the hearing date, ACRC had not provided claimant with a referral to a provider for these three services.

12. Subsequent to the December 23, 2010 visit, Ms. Azevedo declined to further treat claimant. In an undated "Addendum to ACRC Dental Hygiene Progress Notes," she stated that her decision was based on "the unfavorable experience" with the family. She related that at the December 2010 visit, the parents did not agree on what claimant's needs were, that claimant was "calm" during both visits but "refused" a cleaning. Ms. Azevedo did not testify at hearing. ACRC contracts with three to four RDHAP providers. After Ms. Azevedo's refusal to treat claimant, ACRC did not assign or refer him to a new dental hygienist. No satisfactory explanation was provided for this lapse.

13. On February 28 and March 1, 2011, claimant was seen at the University of California, Davis, (UCD) Emergency Room for dental treatment related to "possible dental abscess, dental pain." UCD ordered a CT scan of the sinuses and facial bones. UCD found periapical lucency (sinus abscess) in the region adjacent to teeth #12 and #13 (left maxillary bicuspid and premolar). In the region of the left mandibular bicuspid and tooth #20, UCD found a "focal region of high attenuation felt to represent a bone island." The final diagnosis relevant to his dental complaint was "Acute periapical dental abscess #12, #13." UCD recommended dental correlation and referred claimant to Alexander Malick, DMD.

14. On or about March 4, 2011, Dr. Malick, examined claimant in his office on referral from UCD/ER. Dr. Malick is a dentist with general anesthesia capabilities in a dental group practice that includes oral surgeons. In a letter dated March 16, 2011, Dr. Malick wrote that he had reviewed the CT scans and saw "no signs of dental abscess." He consulted with oral surgeon Brian Harris, DDS, who also saw no dental abscess. Dr. Malick did notice inflamed and bleeding tissue over the extraction site. Dr. Malick was not able to perform a thorough examination intra-orally due to claimant being "non-communicative and non-cooperative." Dr. Malick stated, "The oral surgeon and I felt most likely the patient is having pain from an Oral-Antral communication that gets infected periodically. I think this patient is best treated by an ENT to treat or R/O the oral-antral fistula. At this point, I do not have a specific diagnosis…."[2]

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[1] Oral erythema is characterized by a red lesion, lump, or rash.

[2] An oral-antral communication (OAC) is a communication (opening) between the maxillary sinus/antrum and the oral cavity/mouth. When an OAC is created, it allows the flow of food, smoke or fluid from the mouth into the nose - not just these but also bacteria, fungi and viruses. This can set up a maxillary sinusitis, which depending on how long the communication lasts, may yield an acute/chronic maxillary sinusitis.

15. By letter dated March 10, 2011, Terrance Wardinsky, M.D., ACRC Physician Consultant, conveyed the status of claimant's dental examinations to claimant's case worker, Ms. Vidaurreta. Dr. Wardinsky wrote that he had spoken to Dr. Malick who had identified a possible fistula of the upper left dental cavity between the oral cavity and the sinus area. Dr. Malick was aware of the parent's report that claimant was hitting his face in that area. Dr. Malick did not believe it was due to an abscess or other infection. He recommended claimant be referred to an ENT through UCD and Medi-Cal for further examination. Dr. Malick stated that his group was capable of performing the treatment but at greater expense than the Medi-Cal rate.

16. Between February and April 2011, claimant's parents took him to the hospital, a neurologist, and primary care physician, to address continued fevers, pain, and seizures. In April 2011, Mrs. Garcia took claimant to the Chapa-De Indian Health Program, a provider of free dental services in Placer County. The patient notes indicated: "Has pain on left side since #15 was extracted. Possible open sinus. Please try to take panoramic x-rays for diagnosis of #15 area extraction."

17. Having received no referral from ACRC, on May 2, 2011, claimant's parents took claimant to Dr. Malick for a diagnostic evaluation. According to Dr. Malick's Operative Report and Diagnosis, "since CT scans are not diagnostic of dental problems, [he] could not rule out dental problems without a thorough oral exam including intra-oral x-rays." He placed claimant under general anesthesia and conducted a complete oral examination including full mouth x-rays. He also cleaned claimant's teeth. His impression and diagnosis were as follows:

1. Generalized severe gingivitis
2. No Caries, no PA abscess
3. Confirmed Oral-Antral Fistulae (see x-rays and photos included), chronic sinusitis with episodes of acute sinus infection.

Dr. Malick recommended a referral to an ENT for surgical closure of the oral-antral fistula. Claimant's parents received a bill for Dr. Malick's services in the amount of $1,146 and for anesthesia services from Joel Pedersen, DDS, in the amount of $900. Mrs. Garcia timely paid the total dental balance in the amount of $2,046. Claimant sought reimbursement of this expense from ACRC which was denied.

18. By letter dated September 16, 2011, Dr. Malick explained that claimant's fistula can be surgically corrected by either an ENT in a hospital setting, or an oral surgeon. He initially recommended an ENT based on the specific case circumstances including claimant's mental health, clinical problem, and the family's financial resources. His initial recommendation for an ENT would allow coverage under Medi-Cal. He stated that, "If this family can find an oral surgeon that would be willing to care for this patient, then the oral surgeon is equally qualified to treat the problem. I have then, accordingly, changed my recommendation in the original letter to reflect this fact."

Assessment for Reimbursement of Dental Expenses

19. As of the May 24, 2010 planning team meeting, it was recognized in the IPP Report, that claimant "had not been getting effective dental services." It was also recognized that he was "experiencing sinus problems as a result of a molar that was pulled by Dr. Bughao."

20. To address inadequate dental services, ACRC agreed that after the referral to the "dental coordinator," who would determine claimant's dental needs, they would "fund any dental work previously funded by Medi-Cal." Regarding claimant's sinus problems, the planning team "recommended that [claimant] be seen by an Ear Nose and Throat specialist. Alta California will contact ENT providers and assist with making a referral."

21. ACRC referred claimant to Ms. Azevedo as the "dental coordinator." The December 23, 2010 RDHAP resulted in an "abnormal" periodontal exam finding and referrals for "full mouth x-rays" and a "complete examination." ACRC did not timely identify a local dentist who could perform the x-rays and "complete examination." Ms. Azevedo stated in her December 23, 2010 ACRC Progress Note that she was "unable to treat."

22. After the December 2010 examination, which was clearly incomplete and inconclusive, there continued to be some question as to the nature of claimant's oral discomfort. That is, whether it was due to an abscess or fistula. Claimant required diagnostic tests. Claimant's parents took him to UCD in February and March 2011. UCD rendered a diagnosis of "periapical lucencies adjacent to teeth #12 and 13" (abscess) and recommended "dental correlation." Dr. Malick initially saw claimant on March 4, 2011. ACRC Physician Consultant Dr. Wardinsky, M.D. subsequently spoke to Dr. Malick and on March 10, 2011, notified Ms. Vidaurreta that Dr. Malick had identified a "possible fistula" and along with an oral surgeon recommended "further exam and repair of this area if there is indeed a fistula to prevent ongoing recurrent infection that becomes systemic." Ms. Vidaurreta is claimant's service coordinator and a member of the planning team.

23. Claimant subsequently initiated a Notice of Action (NOA) in reference to his request for emergency dental services. On April 1, 2011, an informal fair hearing was held to discuss the issues. ACRC explained that they were seeking another dentist to meet claimant's needs. It appears that Ms. Vidaurreta was making efforts in this regard. A dentist, Dr. Pan, had been identified and given the forms to become vendorized. However, it is also clear that claimant was in acute and chronic distress, such that the family feared that claimant would hurt himself in reaction to so much pain. In response, Ms. Vidaurreta recommended the family to take claimant to a hospital emergency room (ER). Claimant's family has routinely utilized the ER only to be referred to a dentist. On May 4, 2011, Dr. Malick obtained the x-rays under general anesthesia at a cost to claimant of $2,046. This service was necessary and proper, and long overdue, for confirmation of the underlying medical issue.

24. As of the beginning of the Administrative Hearing in August 2011, claimant's oral fistula had not been surgically closed due to funding issues. Claimant regularly takes antibiotics to suppress infection and continues to display behaviors indicating oral pain. His neurologist, Shawn Kile, M.D., has noted that claimant's seizure activity increases whenever he has a fever. Dr. Kile prescribes antibiotics but feels that Dr. Bughao is responsible for further referrals and recommendations for treatment of claimant's oral fistula. Ms. Vidaurrtta testified that within the last two months, Dr. Pan had become vendorized. She did not learned this until two weeks prior to hearing and had only recently informed Mrs. Garcia.

25. Throughout the hearing, the focus was on the nature of the claimant's illness, and whether that illness should be serviced by a dentist/oral surgeon (for an abscess) or physician (for a fistula). The evidence supports a finding that claimant suffers from an "Oral-antral fistulae, chronic sinusitis, with episodes of acute sinus infection." Either an oral surgeon affiliated with an anesthesiologist or an ENT physician in a hospital setting is capable of surgically closing the opening. The final diagnosis was made by a dentist, Mr. Malick, who claimant saw on a referral from UCD.

26. Up until Dr. Malick's examination on May 2, 2011, the exact etiology of claimant's discomfort was not know, and in fact, had been misdiagnosed by UCD as an abscess. Dr. Malick explained that "CT scans are not diagnostic of dental problems" and he could not rule out dental problems without a thorough oral exam including intra-oral x-rays." It is true that Dr. Malick also provided some general dental care by cleaning claimant's teeth, but that was secondary to obtaining the x-rays and diagnosing the issue. It is noted that full mouth x-rays were recommended by Ms. Azevedo and ACRC was unable to assist claimant through its usual processes. It is clear that specialized dental care was required in claimant's case. Six months passed from the time of claimant's December 2010 RDHAP "abnormal" periodontal examination and his diagnostic examination by Dr. Malick. One year passed from the time of claimant's May 2010 IPP which discussed his sinus complaint and the time he received the diagnostic procedure from Dr. Malick confirming the problem.

27. Based on all of the facts and circumstances of this case, and in accordance with the May 2010 IPP, specifically the Services and Supports identified at IPP items 2.4 through 2.7, ACRC is appropriately responsible to reimburse claimant for the expense of his diagnostic dental treatment from Dr. Malick on May 2, 2010.

LEGAL CONCLUSIONS

Applicable Laws and Regulations

1. The statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act) was enacted by the legislature to provide facilities and services to meet the needs of those with developmental disabilities. (Welf. & Inst. Code, §§ 4500-4846; *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1125.)

2. Pursuant to Welfare and Institutions Code section 4512, subdivision (b), "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability…"

3. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the legislature intended that "the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate…"

4. Pursuant to Welfare and Institutions Code section 4647, subdivision (a), the service coordinator "shall include those activities necessary to implement an individual program plan, including but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary."

5. The evidence established that claimant is entitled to appropriate services and supports in compliance with his May 2010 IPP. Those services and supports relative to oral health and unique based on his individual developmental disability where identified in Objective #2 of the IPP. ACRC did make a referral to the dental coordinator. However, ACRC did not appropriately or timely follow up on the second referral by the RDHAP to obtain diagnostic tests and a treatment plan. Though Ms. Vidaurreta took steps to this end, they were inadequate and claimant continued to suffer for several months as a result.

6. Claimant established that he was in need of specialized services, specifically the diagnostic procedures under anesthesia, provided by Dr. Malick on May 2, 2011. Further, the general dental cleaning was incidental but appropriate given the fact that claimant last received this service in July 2010 and no other RDHAP or vendorized dentist had been identified by ACRC to meet his needs. The cost of services performed on May 2, 2011 was $2,046. ACRC shall reimburse claimant in this amount.

ORDER

The appeal of S.G. under the Lanterman Act from Alta California Regional Center's rejection of his request for reimbursement is GRANTED. The Notice of Proposed Action denying reimbursement is REVERSED. Alta California Regional Center shall reimburse S.G. for diagnostic and general dental services obtained on May 2, 2011, in the amount of $2,046.

DATED: November 17, 2011

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DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days after receiving notice of this final decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)